IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

TUESDAY, THE 13TH MARCH 2007 / 22ND PHALGUNA 1928

OP.No. 8680 of 1999(G)

PETITIONER:
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1. JACOB CHACKO, KARIKKAMBALIL, NANNADUCHALIL, CHEKKIDIKAD, EDATHUA 689 573

2. THOMAS MATHEW PULIMOOTTIL, CHETHANAD, ALAPPUZHA.

BY ADV. SRI.V.GIRI

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO GOVERNMENT, PUBLIC IRRIGATION AND TRANSPORTATION (H) DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE SUPERINTENDING ENGINEER, ROADS AND BRIDGES, SOUTH CIRCLE, THIRUVANANTHAPURAM.

3. THE EXECUTIVE ENGINEER, ROADS DIVISION, ALAPPUZHA.

4. THE ASST. EXE. ENGINEER, ROADS SUB DIVISION, ALAPPUZHA.

BY GOVERNMENT PLEADER SMT. R. BINDU.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 13/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP 14451 OF 1999 IN OP 8680 OF 1999

DISMISSED

13.3.2007 SD/-C.N.RAMACHANDRAN NAIR, JUDGE.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 TRUE COPY OF THE COMMUNICATION DATED 17.2.1999 GRANTING EXTENSION OF TIME.

EXT.P2 TRUE COPY OF COMMUNICATION DATED 18.2.1999 ISSUED BY THIRD RESPONDENT TO FIRST PETITIONER.

EXT.P3 TRUE COPY OF COMMUNICATION ISSUED BY 2ND RESPONDENT TO 3RD RESPONDENT DATED 15.2.1999

EXT.P4 TRUE COPY OF GOVERNMENT ORDER DATED 19.8.1997

EXT.P5 TRUE COPY OF THE REPRESENTATION SUBMITTED BY 2ND PETITIONER DATED 2.12.1998

RESPONDENTS' EXHIBITS:

EXT.R1 TRUE COPY OF THE APPLICATION DATED 4.7.98

EXT.R2 TRUE COPY OF THE APPLICATION DATED 26.1.98

EXTR3 TRUE COPY OF THE RELEVANT PAGES OF AGREEMENT NO. 158/EE/ 97-98

EXT.R4 TRUE COPY OF THE RELEVANT PAGES OF AGREEMENT NO. 17/EE/98-99

EXT.R5 TRUE COPY OF RELEVANT PAGES OF THE PRELIMINARY AGREEMENT.

EXT.R6 TRUE COPY OF SUPPLEMENTAL AGREEMENT.

TRUE COPY

P.S. TO JUDGE.

C.N.RAMACHANDRAN NAIR,J.

O.P. NO. 8680 OF 1999

Dated this the 13th day of March, 2007

JUDGMENT

Petitioner is challenging Exts. P1 to P3 orders whereunder various amounts of fines were imposed for the petitioner's failure to execute the work in time. It is admitted that petitioner did not complete the work in time and applied for extension of time for completion of work. Extension of time though granted was on condition that petitioner will pay fine for delay in execution of work. It is seen that fine is imposed strictly in terms of Ext.P4 G.O. issued by the Government wherein slab rate of fine is imposed for belated execution of work. I do not think the demand of fine can be questioned by the petitioner because petitioner has no right to get extension of time for execution of work. In other words, if time was not extended the contract would have been cancelled and work would have been rearranged at the risk and cost of the petitioner. Therefore by getting extension of time on payment of fine at reasonable rate, petitioner avoided a bigger catastrophe of cancellation of contract and retendering

of contract at the risk and cost of the petitioner. O.P. is therefore devoid of any merit and is dismissed. However, since O.P. is pending for long, petitioner can be granted waiver from payment of interest on fine amount. Respondents are directed to verify the amount payable to the petitioner and release payments only after adjustment of fine amount without any delay and without recovering interest on penalty.

(C.N.RAMACHANDRAN NAIR)
Judge